

CONSERVATION RESTRICTION

I. Grant of Conservation Restriction. Aria at Laurel Hill, LLC, a Delaware limited liability company with an address of 2900 Eisenhower Avenue, Third Floor, Alexandria, VA 22314 (the "Grantor", which term includes the Grantor's successors and assigns with respect to the ownership of the Premises described below), in consideration of One (\$1.00) Dollar and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants to the Inhabitants of the Town of Acton (Grantee), a municipal corporation in Middlesex County, Massachusetts, acting through its Conservation Commission under the authority of Mass. General Law chapter 184, sections 31-33 and Mass. General Law chapter 132A, section 3, a Conservation Restriction in gross and perpetuity on 6.6690 acres of land in said Acton situated off Durkee Lane shown as "Conservation Restriction Easement Area 2" on a plan entitled "Conservation Restriction Easement Plan of Land in Acton & Westford Massachusetts" prepared for Woodlands at Laurel Hill LLC, Scale 1"-100', last revised July 26, 2006, by Stamski and McNary, Inc., and recorded with the Middlesex South Registry of Deeds in Plan Book 223, Plan 16 and with the Middlesex North Registry of Deeds as Plan No. 1538 of 2006 (hereinafter the "Conservation Restriction Plan"), which plan is attached as Exhibit A hereto and made a part hereof, (said land subject to this conservation restriction sometimes referred to as the "Premises"). Reference is hereby made to said Conservation Restriction Plan for a more particular description of the Conservation Restriction Area.

II. Purposes. The Premises that are the subject of this Conservation Restriction have certain unusual, unique or outstanding qualities, the preservation of which in their predominately natural or open condition would be a benefit to the public. As such, the purpose of this Conservation Restriction is to retain the Premises predominantly in its current state, a combination of upland forest, meadow, vernal pools, and wetlands, in a natural, scenic, open condition; to access the Premises for recreation, educational, scientific, cultural and other charitable purposes; to protect and promote the conservation of forest lands, wetlands, soils, natural watercourses, water supplies and wildlife thereon; to protect and enhance the value of any abutting conservation areas; and to allow public access for passive recreation, enjoyment of the forest, wildlife, and open space resources of the Premises as specifically provided for herein ("Purpose").

Furthermore the granting of this Conservation Restriction serves to satisfy the requirement set forth in Conservation Permit No. 006.094 DFW issued by the Commonwealth of Massachusetts Division of Fisheries and Wildlife dated July 27, 2006. The Natural Heritage and Endangered Species Program of the Commonwealth of Massachusetts Division of Fisheries and Wildlife ("NHESP") is the state entity that enforces and administers the Massachusetts Endangered Species Act, Mass. General Law, chapter 131A, as it may be amended ("MESA").

The purpose of this Conservation Restriction is to conserve the natural values of the Premises, conserve and protect the Blue-spotted Salamander and other animal populations of the Premises, and prevent the use or development of the Premises for any purpose or in any manner

which would conflict with the maintenance of the Premises in its current natural condition for this generation and future generations.

III. Prohibited Acts and Uses and Permitted Exceptions.

A. Prohibited Acts and Uses. Subject to the exceptions and rights reserved to the Grantor, its successors and assigns pursuant to Section B below, the Grantor will not perform or give permission to others to perform the following acts or uses at the Premises:

- (1) Alteration or removal of vegetation, except as hereinafter provided in Section III.B and III .C below;
- (2) The construction or placement of any building or structure, except as hereinafter provided in Section III.B and III .C below;
- (3) Except as provided in Section III.B and III .C below, the excavation, dredging or removal from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit in such manner as to significantly affect the surface thereof, and the placement, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever;
- (4) Activities detrimental to drainage, flood control, water quality, water conservation, erosion control or soil conservation or wildlife habitats;
- (5) The use of motorcycles, motorized trail bikes, snowmobiles and all other motor vehicles, except as reasonably necessary in exercising any of the reserved rights pursuant to Section III.B and III .C below, or as required by the police, fire department or other governmental agents in carrying out their lawful duties;
- (6) Construction or maintenance of trails, ways or any paved surfaces, except as provided in Section III.B and III .C below;
- (7) Use of pesticides, or biocides, including but not limited to insecticides, fungicides, rodenticides and herbicides (except as absolutely necessary to preserve rare or endangered plant or animal species and subject to prior written approval and agreement of the Grantee and NHESP), except as hereinafter provided in Section III.B and III .C below;
- (8) Other uses of the Premises or activities which would significantly impair the Purpose of this CR, or which applicable federal, state or local law or regulation prohibits.

B. Permitted Activities and Uses. Notwithstanding the provisions of Section III.A above, the following general acts and uses are permitted, provided that all such activities and uses must be in full conformity with all applicable local, state and federal environmental regulations, including MESA:

- (1) Subject to the prior written approval of the NHESP or its successors, the maintenance or modification of vegetation, excavation, dredging, removal of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposits on the Premises for conservation, habitat management, or scientific purposes;
- (2) Maintenance, repair and use of existing easements, utilities and rights of way, if any;
- (3) Drainage from adjoining land;
- (4) Maintenance, repair, replacement and use of the subsurface sewage disposal system leaching fields as shown on the Conservation Restriction Plan;
- (5) The conduct of scientific research and erection of wildlife migration barriers.
- (6) The maintenance, repair, reconstruction and use of existing ways, trails, fences, bridges, gates and stone walls on the Premises, substantially in their present condition, or as reasonably necessary for the current uses thereof or hereinafter permitted. Subject to the prior written approval of the Grantee and the NHESP, the creation of new ways, trails, fences, bridges, gates and stone walls, so long as such use is not significantly detrimental to water quality, soil conservation, wildlife conservation and/or forestry management practices or otherwise wasteful of the natural resources of the Premises. Maintenance, repair, reconstruction and use shall include the right of Grantor, but not the general public, to pass and repass over the existing ways, bridges and trails and new ways, bridges and trails by motor vehicle for the purposes of maintenance, repair, reconstruction and use, for inspecting and monitoring the public's use of the Premises, and for emergency ingress and egress by governmental agencies such as police and fire to and from the Premises.
- (7) The erection and maintenance of signs identifying ownership of the Premises; its status as a conservation reservation; the restrictions on the use of the Premises; the identity or location of trails, areas of interest, natural features or other characteristics of the Premises;

- (8) The cutting and removal of trees, shrubs and other vegetation, the planting of native trees, shrubs and other vegetation and the removal of obstacles, such as downed, dead or dying trees, brush, shrubs, debris, or trash for normal maintenance of the Premises in a primarily natural condition, to prevent threat of injury or damage to persons or property, and to further the Purpose protected by this Conservation Restriction. The cutting of trees and vegetation for any non-commercial purpose in accordance with a plan approved by NHESP, prepared by a natural resources professional that is designed to protect or enhance the conservation values of the Premises, including without limitation, wildlife habitat and scenic values.
- (9) The use of the Premises for passive recreational activity such as hiking, snowshoeing, biking, horseback riding, and cross-country skiing on designated trails only, nature study, hunting, fishing, and other like activities;
- (10) Trapping to control nuisance wildlife species in accordance with G.L.c. 131, § 80A;
- (11) Layout and construction of new trails, provided, however, that such trails shall be no greater than six feet in width, shall not be located so as to negatively impact to any significant degree the Purpose protected by this Conservation Restriction, and shall be constructed only after written permission is received from the Grantee and NHESP;
- (12) Any other use not otherwise prohibited by this Conservation Restriction or by applicable federal, state or local law or regulation.

C. Permitted Activities and Uses. Notwithstanding the provisions of Section III.A above, Conservation Restriction Use Area C, as shown on the Conservation Restriction Plan, may be used for the construction, reconstruction, inspection and maintenance of any and all drainage facilities (including but not limited to a detention basin and over flow) necessary or desirable for the project as permitted by that certain Comprehensive Permit dated December 1, 2005, issued by the Westford Zoning Board of Appeals and recorded in the Middlesex North District Registry of Deeds at Book 19668, Page 264 and by that certain Comprehensive Permit dated December 20, 2005, issued by the Acton Zoning Board of Appeals and recorded in the Middlesex South District Registry of Deeds at Book 47074, Page 265, together with any and all rights and easements necessary and desirable to effectuate the foregoing.

This Section III is not intended, however, to authorize any use of the Premises and/or any activity thereon that is not otherwise permitted under any applicable local, state or federal law, statute, regulation or ordinance, and in the event of any inconsistency between the provisions of this Section III.B and the restrictions set forth in Section III.A above the provisions of Section III.A shall control and be binding upon the Grantor.

IV. Legal Rights and Remedies of Grantee and the NHESP

A. Legal and Injunctive Relief. This Conservation Restriction shall be enforceable by the Grantee and by the Commonwealth of Massachusetts acting through the Massachusetts Division of Fisheries and Wildlife, Natural Heritage & Endangered Species Program (the "NHESP").

The rights hereby granted to Grantee and the NHESP include the right to 1) access the Premises and to monitor activities and uses of the Premises for compliance with the terms and provisions of this Conservation Restriction, 2) carry out all rights and responsibilities of Grantee and the NHESP set forth in said Permit, and 3) enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations thereof, including without limitation relief requiring restoration of the Premises to its condition prior to the time of the injury complained of (it being agreed that Grantee and/or the NHESP may have no adequate remedy at law), and shall be in addition to, and not in limitation of, any other rights and remedies available to Grantee and/or the NHESP.

In the event that Grantee becomes aware of a violation of this Conservation Restriction, Grantee shall notify Grantor in writing of such violation. Grantor shall have 30 days after receipt of such notice to undertake actions, including the restoration of the Premises to its condition prior to the time of the violation complained of, that are reasonably determined as appropriate to swiftly correct the condition(s) constituting said violation and to repair any damages to the Premises resulting from said violation, provided, however, that Grantor shall have no obligation to restore conditions in existence prior to the effective date of this Conservation Restriction. If the Grantor fails to take such corrective action within said 30-day period after notice from Grantee, the Grantee may undertake whatever actions, including appropriate legal proceedings which include obtaining injunctive and other equitable relief that Grantee determines are reasonably necessary to effect such corrections and otherwise enforce the terms of this Conservation Restriction. Grantee shall keep the NHESP fully advised of all such actions and decisions by Grantor and Grantee.

If the NHESP in its sole discretion determines that Grantee is not taking satisfactory action to monitor and/or enforce this Conservation Restriction, the NHESP shall give written notice to Grantee of said unsatisfactory monitoring and/or enforcement and the reasons therefore, and Grantee shall have 30 days in which to take action satisfactory to the NHESP to monitor and enforce this Conservation Restriction. If the NHESP in its sole discretion subsequently determines that the Grantee has failed to take satisfactory action within said 30-day period following written notice from the NHESP, the NHESP may in its sole discretion monitor and undertake whatever actions, including appropriate legal proceedings which include obtaining injunctive and other equitable relief, that the NHESP determines are reasonably necessary or appropriate to effect such corrections of any violations and/or to otherwise enforce the terms and provisions of this Conservation Restriction as provided herein.

If the NHESP in its sole discretion determines that immediate legal or other action is necessary to protect the Premises against injury or harm, the NHESP may waive this notice and 30-day

Grantee response time period and take whatever legal and other action the NHESP deems as necessary or appropriate to protect the resources on the Premises.

Grantor covenants and agrees to reimburse Grantee and the NHESP for all reasonable costs and expenses (including without limitation counsel fees) incurred by Grantee and the NHESP in enforcing this Conservation Restriction and/or in remedying or abating any violation thereof, provided that a violation of this Conservation Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred.

Enforcement of the terms of this Conservation Restriction shall be at the discretion of Grantee and the NHESP, and any election by Grantee and/or the NHESP as to the manner and timing of its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

Nothing herein shall preclude Grantor's and Grantee's rights to pursue other parties for damages to the Premises for vandalism, trespass, or any other violation of the terms of this Conservation Restriction.

B. Acts Beyond the Grantor's Control. Nothing contained in this Conservation Restriction shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Premises resulting from causes beyond the Grantor's control, including but not limited to fire, flood, storm, earth movement, trespass, other actions of third parties not under Grantor's control, or from any prudent action taken by Grantor in event of an emergency.

C. Grantee's Disclaimer of Liability. By its acceptance of this Conservation Restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Premises.

D. Grantor's Rights. Except as expressly provided herein, Grantor shall not have any obligation to maintain the Premises but shall have the right to do so if it so elects in accordance with this Conservation Restriction.

V. Enforcement Authority of Massachusetts Attorney General

Grantor and Grantee hereby recognize the authority of the Massachusetts Attorney General pursuant to M.G.L. c.12, §§ 3, 7 and 11D to, among other things, prevent or remedy damage to the environment and to prosecute informations or other processes against persons who intrude on the land, rights or property of the Commonwealth of Massachusetts (hereafter "Commonwealth"), or commit or erect a nuisance thereon. The Parties also recognize the interests of the Commonwealth in approving, enforcing and supporting conservation and other restrictions and the benefits to the public conferred by such restrictions acquired pursuant to M.G.L. c. 184, §§ 23 and 25 – 32. Accordingly, the Parties hereby consent to the Attorney General's enforcing the provisions of this restriction pursuant to M.G.L. c. 12, §§ 3, 7 and 11D, and M.G.L. c. 184, §§ 23 and 25 – 32. Such enforcement may include, among other things, the right to commence or intervene in any legal proceeding in order to secure the rights of the holder

of a conservation restriction and the Commonwealth conferred under M.G.L. c 184, §§ 23, 25 – 32; the right to remedy past damage or prevent future damage to the environment as a result of actions or inactions on the part of an owner of land upon which a conservation or other restriction has been recorded; and the right to appeal any decision in any legal proceeding taken by any party that may affect the state interest and public benefit conferred by a restriction created pursuant to M.G.L. c.184, §§ 23, 25 - 32.

VI. Access. The Conservation Restriction hereby conveyed does not grant to the Grantee, to the general public, or to any other person any right to enter upon the Premises, except there is hereby:

- A. Granted to the public, a permanent easement to access and utilize any passive recreation trails existing or developed in accordance with Section III (B)(11) hereof.
- B. Granted to the Grantee and NHESP the right to enter the Premises at reasonable times and in a reasonable manner for the purpose of (i) inspecting the Premises to determine compliance with the requirements of this Restriction, (ii) exercising Grantee's and NHESP's rights herein, such actions to include the right to plant and selectively cut or prune trees, brush or other vegetation to implement disease prevention measures; and (iii) conducting scientific research and special wildlife habitat preservation activities.

The liability of Grantor with respect to any such access to the Premises shall be subject to the provisions of Mass. General Law, Chapter 21, Section 17C.

VII. Assignability.

The burdens of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises.

The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction. The Grantor and its successors and assigns agree to execute any such instruments upon request.

The benefits of this Conservation Restriction shall not be assignable by the Grantee except in the following instances and from time to time:

- i. As condition of any assignment, the Grantee obtains the approval of Grantor and requires that the purpose of this Conservation Restriction be carried out;
- ii. The assignee, at the time of the assignment, qualifies under Section 170 (h) of the United States Internal Revenue Code of 1954, as amended, and the applicable regulations thereunder, and under Section 32 of Chapter 184 of the General Laws of Massachusetts as an eligible donee to receive this Conservation Restriction directly; and

Any assignment shall be in compliance with the provisions of Article 97 of the Amendments to the State Constitution.

VIII. Subsequent Transfers. The Grantor agrees to refer to the terms of this Conservation Restriction in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Premises. Notwithstanding anything contained herein, to the extent permitted under applicable law, upon the transfer by a party of its entire interest in the Premises, the rights and obligations of such party under this Conservation Restriction shall terminate. In the event of a transfer by a party of a partial interest in the Premises, the rights and obligations of such party under this Conservation Restrictions shall terminate with respect to the portion transferred.

IX. Estoppel Certificates. Upon request by the Grantor, the Grantee shall within twenty (20) days execute and deliver to the Grantor any document, including an estoppel, which certifies the Grantor's compliance with any obligation of the Grantor contained in this Conservation Restriction and which otherwise evidences the status of this Conservation Restriction as may be requested by Grantor.

X. Effective Date. This Conservation Restriction shall be effective after all of the following have occurred: (i) when executed by the Grantor and the Grantee, (ii) when the administrative approvals required by Mass. General Law, Chapter 184, Section 32 have been obtained: and (iii) when it has been recorded in Middlesex South District Registry of Deeds.

XI. Recordation. The Grantor shall record this instrument in the Middlesex South County Registry of Deeds. This instrument is exempt from documentary stamp exercise taxes pursuant to Mass. General Law, Chapter 64D, Section 1. For Grantor's title, reference is made to the deed recorded in Middlesex South Registry of Deeds in Book 48626, Page 551.

XII. Miscellaneous.

A. Construction and Validity. Notwithstanding any general rule of construction to the contrary, this Conservation Restriction shall be liberally construed in a manner consistent with the Purpose of this Conservation Restriction. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid. If any provision of this Conservation Restriction or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of this Conservation Restriction and their application to other persons and circumstances shall not be affected thereby.

B. Costs and Taxes; Liability. The Grantor agrees to pay and discharge when and if due any and all real property taxes and other assessments levied by competent authority with respect to the Premises and attributable to the period of the Grantor's ownership of the Premises

C. Extinguishment; Eminent Domain. The Grantor and the Grantee agree that the grant of this Restriction gives rise to a property right that vests immediately in the Grantee and which has a fair market value that is equal to the value by which the Restriction reduces, at the time of the grant, the value of the property as a whole.

Should this Restriction be extinguished over all or any portion of the Premises by judicial decree or by act of public authority, the Grantee shall be entitled to a portion of the proceeds equal to the proportionate value of the Restriction, subject, however, to any applicable law which expressly provides for a different disposition of proceeds. If the conservation interests protected hereby are unaffected by the taking, and the only interest taken by public authority is the Grantor's interest, and recovered proceeds are awarded on the basis of the value of the Premises as restricted by this Restriction, then the proceeds from such taking shall be payable in their entirety to Grantor.

Whenever all or any part of the Premises or any interest therein is taken by a public authority (other than The Commonwealth) under power of eminent domain, or if all or any part of this Restriction is extinguished by act of public authority (other than The Commonwealth), then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. If the public authority is The Commonwealth, the Grantor and the Grantee shall pursue their remedies separately.

If circumstances arise in the future such as to render the purposes of this Conservation Restriction impossible to accomplish, this Conservation Restriction can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction and with the approval of the Secretary of the Executive Office of Environmental Affairs in accordance with M.G.L. c. 184, Section 32.

D. Cumulative Rights. The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for enforcement of this Conservation Restriction.

E. Certain Recording Matters. This Restriction is conveyed subject to matters of record at the Middlesex South Registry of Deeds that affect or relate to the Premises.

F. Amendments. This Conservation Restriction may be amended with the consent of the Grantor, the Grantee and the Secretary of the Executive Office of Environmental Affairs.

G. Governing Law. This Restriction shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

END OF CONSERVATION RESTRICTION EXCEPT FOR SIGNATURE PAGES

SIGNED as a sealed instrument this _____ day of _____, 2007.

GRANTOR:

ARIA AT LAUREL HILL, LLC, a
Delaware limited liability company

By: AVB Development Transactions,
Inc., its sole manager

By: _____
Name:
Title

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

On this _____ day of _____ 2007, before me, the undersigned notary public, personally appeared _____, _____ of AVB Development Transactions, Inc. as the sole manager of Aria at Laurel Hill, LLC, proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it in his stated capacity, duly authorized, and voluntarily for its stated purpose.

Notary Public
My commission expires:

APPROVAL OF
COMMONWEALTH OF MASSACHUSETTS
DIVISION OF FISHERIES & WILDLIFE

Wayne F. McCallum, Director

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

On this _____ day of _____ 2007, before me, the undersigned notary public, personally appeared Wayne F. McCallum, Director of the Commonwealth of Massachusetts, Division of Fisheries and Wildlife, proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it in his stated capacity, duly authorized, and voluntarily for its stated purpose.

Notary Public
My commission expires:

APPROVAL OF CONSERVATION COMMISSION

The above Conservation Restriction is accepted this ____ day of _____ 2007.

CONSERVATION COMMISSION OF THE
TOWN OF ACTON

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

On this _____ day of _____ 2007, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the preceding document, and acknowledged to me that they signed it in their stated capacity, duly authorized, and voluntarily for its stated purpose.

Notary Public

My commission expires:

APPROVAL OF SELECTMEN

We, the undersigned, being a majority of the Selectmen of the Town of Acton, hereby certify that at a meeting duly held on _____, 2007 the Selectmen voted to approve the foregoing Conservation Restriction to the Town of Acton acting by and through its Conservation Commission pursuant to M.G.L. c. 184, §32 and M.G.L. c. 40, §8C.

BOARD OF SELECTMEN

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

On this _____ day of _____ 2007, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the preceding document, and acknowledged to me that they signed it in their stated capacity, duly authorized, and voluntarily for its stated purpose.

Notary Public
My commission expires:

APPROVAL BY SECRETARY OF ENVIRONMENTAL AFFAIRS
COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction to the Town of Acton has been approved in the public interest pursuant to M.G.L. Chapter 184, Section 32.

Date: _____, 2007.

Secretary of Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

On this _____ day of _____ 2007, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the preceding document, and acknowledged to me that they signed it in their stated capacity, duly authorized, and voluntarily for its stated purpose.

Notary Public
My commission expires: